

CUSTOMS BULLETIN AND DECISIONS

**Weekly Compilation of
Decisions, Rulings, Regulations, Notices, and Abstracts
Concerning Customs and Related Matters of the
U.S. Customs Service
U.S. Court of Appeals for the Federal Circuit
and
U.S. Court of International Trade**

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This issue contains:
U.S. Customs Service
General Notices

**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

NOTICE

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U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, August 9, 2000.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF TREATMENT OR RULING RELATING TO THE CLASSIFICATION OF OFFSET PRINTING POSTERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of treatment or ruling relating to the classification of certain offset printing posters.

SUMMARY: Pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), this notice advises interested parties that Customs intends to revoke a treatment previously accorded by Customs to merchandise described as offset printing posters and to any substantially identical merchandise or contrary ruling. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before September 15, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John Elkins, Textile Branch, (202) 927-2380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Under the provisions of section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs must publish a proposed ruling which would have the effect of modifying the treatment previously accorded by Customs to substantially identical transactions.

Accordingly, in light of the mandatory dictates of 19 U.S.C. 1625, Customs is publishing the attached proposed ruling with the intent to revoke the treatment previously accorded to the subject offset printing posters involved and any other treatment previously accorded by Customs to substantially identical merchandise. Among other reasons, this treatment may be the result of an importer's alleged reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Customs believes that treatment under 19 U.S.C. 1625(c)(2) is personal to each importer and is dependent upon the facts and circumstances involved in the import transactions claimed to constitute a treatment. Any person with substantially identical merchandise which is being imported contrary to the holding in the attached proposed ruling whether as a result of claimed treatment or a specific ruling to the importer should advise Customs during this notice period. With respect to a claim of treatment, such advise to Customs must contain a full and complete disclosure of the facts and circumstances involved and a listing of all entries involved, including entries of

the same merchandise classified differently than the claimed treatment. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling relating to substantially identical merchandise which is contrary to the attachment to this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice. All claims are subject to verification by Customs.

Customs, pursuant to 19 U.S.C. 1625(c)(2), intends to revoke the treatment previously accorded to this merchandise, and any other treatment of substantially identical merchandise or of any contrary ruling to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964035 (see "Attachment A" to this document). Before taking this action, consideration will be given to any written comments timely received.

Dated: August 2, 2000.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
CLA-2 RR:CR:TE 964035 RH
Category: Classification
Tariff No. 4911.91.2020

MR. HENRI BORIUS
CLOVER EDITIONS
PMB 909
1032 Irving Street
San Francisco, CA 94122

DEAR MR. BORIUS:

This is in response to your letter of March 28, 2000 to the Customs Area Director, San Francisco which has been referred to us for reply in which you claim a treatment under 19 USC 1625(c) with respect to the classification under the Harmonized Tariff Schedule of the United States (HTSUS) for certain offset printing posters.

Facts:

The subject merchandise consists of offset printing posters which you state were previously imported by you under subheading 4911.91.4020, HTSUSA, which provides for, among other things, posters other than lithograph on paper. You object to Customs recent reclassification of this merchandise under subheading 4911.91.2020, HTSUSA, which provides for, among other things, lithograph on paper or paperboard.

Specifically, the merchandise involved in this matter was entered more than 50 times erroneously for at least eleven years, examined at least six times by Customs, and you were

never informed the merchandise was misclassified. The erroneous classification was only discovered as a result of increased Customs review of the merchandise because of sanctions on certain products of the European Community as a consequence of the "banana war".

Issue:

What is the proper classification for the subject merchandise? Is there a treatment under the provisions of 19 USC 1625(c)(2) for your merchandise based on the above facts.

Law and Analysis:

With respect to the first issue, classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

The subject merchandise is referred to as "offset" printing posters. Before we arrive at the proper classification for this merchandise one must first understand the relevant concepts. "Lithography" is defined in *Webster's Deluxe Unabridged Dictionary*, 1979, at 1056,

RE:

the art or process of printing from a flat stone or **metal plate** by a method based on the repulsion between grease and water: the design is put on the surface with a greasy material, and then water and printing ink are successively applied; the greasy parts, which repel water, absorb the ink but the wet parts do not. [Emphasis added]

In *Pocket Pal. A Graphic Arts Production Book*, 1974, at 32, lithography is defined as: Lithography uses the *planographic* method. The image and non-printing areas are essentially on the same plane of the surface of a thin metal plate, and the definition between them is maintained chemically. Printing is from a plane or flat surface, one which is neither raised nor depressed.

"Offset lithography" is defined in *The Dictionary of Paper*, 1980, at 288, as:

An adaptation of the principles of stone (or direct) lithography, in which the design is drawn or photographically reproduced upon a thin, flexible metal plate which is curved to fit a revolving cylinder. The design from this plate is transferred to or offset onto a rubber blanket carried upon another cylinder, which in turn transfers the design to the paper, cloth, metal, etc.

The term "offset" is defined in the same source, at 287, as:

A technique in printing by which the ink images are transferred from the plate first to an intermediate rubber blanket and then to the material being printed. This technique, which reduces plate wear and permits printing on rougher material, is most commonly associated with lithographic printing. For this reason, the word "offset" alone is sometimes used to indicate offset lithography.

In *Pocket Pal. A Graphic Arts Production Book*, 1974, at 32, in a discussion of "offset lithography", it states:

Transferring the image from the plate to a rubber blanket before transfer to the paper is called the *offset principle*. Most lithography is printed in this way, and the term *offset* has become synonymous with lithography.

As such, we emphasize that a critical concept in the classification of this merchandise is the understanding, as reflected in the above definitions, that the term "offset method" of printing is in fact, used to indicate a particular type of lithography, or stated another way, what may or may not be an adaptation of lithography. In the case of the subject merchandise, that adaptation is "offset lithography".

There is some confusion with respect to the classification of this merchandise in as far as how merchandise, described by the above referenced terms, is provided for under the tariff. In this respect, there are two headings which merit review. Heading 4911, HTSUS, provides for other printed matter including printed pictures and photographs. This heading includes pictures and photographs printed by lithography. Note 1(d) to chapter 49, HTSUS, states that this chapter does not cover "original engravings, prints or lithographs (heading 9702). * * *

Heading 9702, HTSUS, provides for, among other things, original engravings, prints and lithographs. Note 2 to chapter 97, HTSUS, states:

For the purposes of heading 9702, the expression 'original engravings, prints and lithographs' means impressions produced directly, in black and white or in color, of

one or of several plates wholly executed by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photomechanical process.

As discussed in the paragraphs that follow, one of the determinative factors in the classification of this merchandise is the way in which the image is transferred, either directly from the plate to the paper, without the use of a mechanical or photomechanical process, as in the case of the lithographs of heading 9702, HTSUS, or indirectly, and with the use of a mechanical or photochemical process, as is the case of the lithographs provided for under heading 4911, HTSUS.

The subject merchandise is not the result of the lithographic process provided for under heading 9702, HTSUS. The prints of heading 9702, HTSUS, are unique in that they are "original prints" produced directly by the artist, with a plate or stone created by him or her. The processing of these prints involves a direct transfer from the stone or plate to the paper by any means other than "mechanical or photomechanical process." As such, although the subject offset printing posters are not lithographs as provided for under heading 9702, HTSUS, this does not in any way preclude their classification as "lithographs" as provided for under a different heading, that is to say, heading 4911, HTSUS.

Subheading 4911.91.20, HTSUSA, provides for lithographs on paper or paperboard which are the result of a lithographic process different from that provided for under heading 9702, HTSUS. Stated another way, the prints of subheading 4911.91.20, HTSUSA, are not produced directly by the artist via use of an original plate or stone, the transfer is a three step process from plate to intermediate blanket to paper, and the use of mechanical or photomechanical process is not excluded. In this case the word "offset" is used as an idiomatic term intended to refer to "lithographic offset process" which indicates an alternate printing process. As the subject merchandise is the result of such a lithographic offset process, it is properly provided for under subheading 4911.91.20, HTSUSA. See, e.g., Headquarters Rulings Letter (HQ) 962891, and HQ 963605, dated November 16, 1999, and NY 856467, dated September 28, 1990, which classified similar merchandise in subheading 4911.91.20, HTSUSA.

With respect to the second issue, 19 USC 1625(c)(2) provides that a proposed interpretative ruling or decision which would have the effect of modifying the treatment previously accorded by Customs to substantially identical transaction shall be published in the CUSTOMS BULLETIN for public comment and be effective 60 days after the date of publication of the final ruling or decision.

While no regulations have been published by Customs with respect to what constitutes a treatment, it is Customs opinion that the answer is dependent upon the facts and circumstances involved and that treatment is personal to each importer. The granting of treatment to one importer does not carry over to another importer of the same merchandise where different facts or circumstances are involved. Each claim must be looked at separately and a determination made under the specific facts and circumstances as to whether or not to grant a claim of treatment.

Under the facts and circumstances of this particular situation as set forth in the facts portion of this decision, it is Customs opinion that a treatment exists. Accordingly, the classification for merchandise which is the subject of this decision imported by you will be allowed under subheading 4911.91.4020, HTSUS, in the quantities and frequency of past importations by you of this merchandise until the effective date of the final publication of this ruling in the CUSTOMS BULLETIN. Thereafter the merchandise must be entered in accordance with the classification set forth in the final ruling (i.e. subheading 4911.91.2020).

Holding:

Other than for the classification and time frame set forth in the above paragraph, the subject merchandise is properly classified in subheading 4911.91.2020, HTSUSA.

If the subject merchandise consists of posters, it is classified in subheading 4911.91.2020, HTSUSA, which provides for other printed matter, including printed pictures and photographs: other: pictures, designs and photographs: printed not over 20 years at time of importation: other: lithographs on paper or paperboard: not over 0.51 mm in thickness: posters. The applicable general column one rate of duty is 6.6 cents/kg.

As the subject merchandise is classified in subheading 4911.91.2020, HTSUSA, and is a product of France, it is subject to the provisions of subheading 9903.08.11, HTSUSA, which makes this merchandise dutiable at the rate of 100 percent *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF MUSICAL PILLOWS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of two tariff classification rulings and revocation of treatment relating to the classification of musical pillows.

SUMMARY: Pursuant to section 1625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify two ruling letters relating to the tariff classification of musical pillows under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 15, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Commercial Rulings Division (202) 927-2511.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility". These concepts

are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify two ruling letters pertaining to the tariff classification of musical pillows. Although in this notice Customs is specifically referring to two rulings (Headquarters Rulings (HQ) HQ 087316 dated July 9, 1990 and HQ 082738 dated February 8, 1990), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In HQ 087316, Customs ruled, among other items not herein relevant, that a heart shaped music box (item #2412) which was designed to be hung on a baby's crib, was classifiable in subheading 6307.90.9590, HTSUS, which provides for pillows. In HQ 082738, Customs ruled, among other items not herein relevant, that a stuffed Daisy Kingdom Musical Pillow (item # 46-3500) which contained a wind-up music box,

was classifiable in subheading 9503.9070.30, HTSUS. These two ruling letters are set forth as "Attachments A-B" to this document. Since the issuance of these rulings, Customs has reviewed the classification of these items and has determined that the cited rulings are in error. We have determined that these items should be treated as music boxes, classifiable in heading 9208, HTSUS, which accurately describes the merchandise.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify HQ 087316 dated July 9, 1990, and HQ 082738 dated February 8, 1990, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters HQ 964151 and HQ 964150 (see "Attachments C-D" to this document).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: August 1, 2000.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 9, 1990.
CLA-2 CO:R:C:G 087316 CRS
Category: Classification
Tariff No. 6307.90.9590

JEFF MUSSER
EXPEDITORS INTERNATIONAL
880 Hinckley
P.O. Box 4389
Burlingame, CA 94011-4389

Re: Decorative pillows which do not provide support for the head are not articles of bedding of 9404; similar pillows which incorporate a musical mechanism are not music boxes of 9208.

DEAR MR. MUSSER:

This is in reply to your letter dated April 27, 1990, to our New York office, on behalf of your client, Paper White, Ltd., in which you requested a ruling under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) on four small decorative pillows. Samples were submitted with your request.

Facts:

The articles in question are four woven decorative pillows manufactured in and imported from Hong Kong. Entry will be made through the ports of San Francisco and Oakland and, on occasion, through Los Angeles.

Item #1452 is a seven inch square "ring bearer" pillow of 55 percent linen, 45 percent cotton, and is used in weddings for carrying wedding rings. The pillow is stuffed with 100 percent polyester and is embroidered with 100 percent cotton.

Item 2407 is a five inches by seven inches and is described as a "baby sleeping sign" pillow which you state is designed to be hung on the door knob of a baby's room. The pillow itself is 55 percent linen, 45 percent linen, stuffed with 100 percent polyester and embroidered with 100 percent cotton.

Item 2411 is a five inch by seven inch pillow with a small pocket which you describe as a "tooth fairy" pillow. You state that the pillow is designed to hold a baby's tooth. The pillow is made of 55 percent linen, 45 percent cotton, and is stuffed with 100 percent polyester and embroidered with 100 percent cotton.

Item 2412 is heart shaped music box which is designed to be hung on a baby's crib. The pillow is 55 percent linen, 45 percent cotton, embroidered with 100 percent cotton and stuffed with 100 percent polyester. A plastic music box with a spring-operated motor is contained within the pillow.

Issue:

Whether items #1452, #2407 and #2411 are classifiable as articles of bedding of heading 9404, HTSUSA; and whether item 2412 is classifiable as a music box of heading 9208, HTSUSA.

Law and Analysis:

Heading 9404, HTSUSA, provides for, *inter alia*, articles of bedding, including pillows. However, the pillows at issue are a class of merchandise separate and distinct from bedding. They are not designed to cushion the head during sleep as they are too small to provide support for the neck and head. See HRL 086646 of June 8, 1990. They are designed instead as wedding pillows, *etc.*, and therefore are not classifiable in heading 9404.

Heading 9208, HTSUSA, covers, *inter alia*, music boxes. The "heart shaped music box" pillow, item #2412, incorporates a musical mechanism. Nevertheless, the *Explanatory Notes*, which constitute the official interpretation of the Harmonized System at the international level, provide in pertinent part at EN 92.08 that:

Articles which incorporate a musical mechanism but which are essentially utilitarian or ornamental * * * are not regarded as musical boxes within the meaning of this heading. These articles are classified in the same headings as the corresponding articles not incorporating a musical mechanism.

Item #2412 serves both a utilitarian and ornamental function and is therefore classifiable as if it did not incorporate a musical mechanism.

Holding:

The four pillows in question are classifiable in subheading 6307.90.9590, HTSUSA, under the provision for 'other made up articles * * *, other, other, other, other, and are dutiable at 7 percent ad valorem.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 8, 1990.

CLA-2 CO:R:C:G 082738 SS
Category: Classification
Tariff No. 9503.49.0020, 9503.70.8000,
9503.90.6000 and 9503.90.7030

MS. LAURA FUMAGALLI
IMPORT/EXPORT MANAGER
DAKIN, INC.
7000 Marina Blvd.
Brisbane, CA 94005

Re: Toys and Puppets.

DEAR MS. FUMAGALLI:

This is in response to your ruling request dated July 19, 1988, addressed to our New York office, concerning the tariff classification of certain toys under the Harmonized Tariff Schedule of the United States.

Facts:

The merchandise under consideration is as follows:

1. Item 46-3500—Daisy Kingdom Musical Pillow, consisting of a small stuffed pillow containing a wind-up music box. This item is designed to be tied onto the baby's crib.
2. Item 26-0460—Pop-up Surprise, consisting of a synthetic textile gift box containing the head of an animal. When operated as a finger puppet, the animal head pops up from inside the closed box.
3. Item 18-8870—All-Star Puppet Mitt & Ball. The sample submitted is one of 6 different animal styles. The item consist of the head portion of an animal which is stated to function as a mitt. It has a Velcro-type fastener in the mouth to trap a fabric covered, stuffed ball.
4. Item 18-8720—Mary had A Little Lamb Musical Puppet, consisting of hand puppet of a lamb. The muzzle area of the puppet contains a music-producing electronic chip which is activated by squeezing the muzzle.

Issue:

What is the proper tariff classification for a toy musical pillow, a pop-up surprise, a puppet mitt and ball and a musical hand puppet of a lamb.

Law and Analysis:

Classification under the HTSUS is governed by the General Rules of Interpretation (GRI 1). GRI 1 provides that classification is determined first in accordance with the headings and relative Section or Chapter Notes.

Subheading 9503.90.7030, HTSUS, provides for other toys having a spring mechanism. The sample of the Daisy Kingdom Musical Pillow is a toy pillow containing a music box with a spring mechanism, and accordingly, is properly classifiable under this subheading.

Subheading 9503.90.6000, HTSUS, provides for other toys (except models), not having a spring mechanism. The sample of the Pop-Up Surprise of a finger puppet in a box is properly classifiable under this subheading.

Subheading 9503.70.8000, HTSUS, provides for other toys put up in sets or outfits, and parts and accessories thereof, other than toy tea sets of ceramic ware and other than toy alphabet blocks. The sample of the All-Star Puppet Mitt & Ball is a toy set consisting of the head portion of an animal having a Velcro-type fastener in the mouth to hold a stuffed ball, and accordingly, is properly classifiable under this subheading.

Subheading 9503.49.0020, HTSUS, provides for toys representing animals or non-human creatures, other than stuffed, other than of metal not having a spring mechanism. The sample consisting of a hand puppet of Mary Had A Little Lamb is an animal representation, not stuffed and not containing a spring mechanism, and accordingly, is properly classifiable under this subheading.

Holding:

The sample of the Daisy Kingdom Musical Pillow is properly classifiable under subheading 9503.90.7030, HTSUS, dutiable at a rate of 6.8 percent ad valorem.

The sample of the Pop-Up Surprise is properly classifiable under subheading 9503.90.6000, HTSUS, dutiable at a rate of 6.8 percent ad valorem.

The sample of the All-Star Puppet Mitt & Ball is properly classifiable under subheading 9503.70.8000, HTSUS, dutiable at a rate of 6.8 percent ad valorem.

The sample of a hand puppet representing Mary Had A Little Lamb is properly classifiable under subheading 9503.49.0020, HTSUS, dutiable at a rate of 6.8 percent ad valorem.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964151 TF
Category: Classification
Tariff No. 9208.10.00

MS. LAURA FUMAGALLI, IMPORT/EXPORT MANAGER
DAKIN, INC.
7000 Marina Blvd.,
Brisbane, CA 94005

Re: Modification of HQ 082738; other toys and models.

DEAR MS. FUMAGALLI:

This is in regard to HQ 082738 issued to you on February 8, 1990, by this office in reply to your letter of July 19, 1988, in which you requested a tariff classification ruling, of among other items, a Daisy Kingdom musical pillow. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling modifies HQ 082738 by providing the correct classification for the Daisy Kingdom musical pillow.

Facts:

The subject good, identified as item #46-3500, is a Daisy Kingdom Musical Pillow, which consists of a small stuffed pillow containing a wind-up music box. This item is designed to be tied onto a baby's crib.

In HQ 082738, Customs found the subject good classifiable as other toys within subheading 9503.90.00, Harmonized Tariff Schedule of the United States.

Issue:

Whether the subject goods are classifiable as music boxes in subheading 9208.10.00, HTSUS.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, may be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the HTSUS. The ENs, although not dispositive, are used to determine the proper interpretation of the HTSUS by providing a commentary on the scope of each heading of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

| | |
|-------------|--|
| 9208 | Music boxes, fairground organs, mechanical street organs, mechanical singing birds, musical saws and other musical instruments not falling within any other heading of this chapter; decoy calls of all kinds; whistles, call horns and other mouth-blown sound signaling instruments: |
| 9208.10.00 | Music boxes |
| | * * * * * |
| 9503 | Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: |
| 9503.90.00 | Other |
| | Parts and accessories |
| | * * * * * |

In HQ 082738, Customs held the subject goods to be classifiable as toys within subheading 9503.90 which provides for "other toys; reduced-size ("scale") models and similar recreational models * * *."

We do not agree that the subject goods are classifiable as toys within heading 9503.90.00, HTSUS. Although the term "toy" is not defined in the HTSUS, the ENs to Chapter 95 provide that toys are intended essentially for the amusement of persons (children and adults). In the instant case, the subject goods do not amuse. Rather, they play tunes which are intended to soothe and lull a child to sleep. Based on these facts, we do not find the goods to be classifiable as toys within heading 9503, HTSUS.

We must now consider whether the subject goods are classifiable as music boxes within heading 9208, HTSUS. In the *Merriam-Webster's Collegiate Dictionary*, the term "music box" is defined as a container enclosing an apparatus that reproduces music mechanically when activated by clockwork. *Id.* at 767 (10th Ed.) In the instant case, the subject goods contain a mechanized music box which plays tunes and is incorporated in a case. The HTSUS provides specifically for "music boxes" in heading 9208, HTSUS.

The ENs for heading 9208, HTSUS, categorize music boxes as musical instruments which are precluded from classification in any other heading of this chapter. It states, in pertinent part, that music boxes:

"[c]onsist of small mechanical movements playing tunes automatically, incorporated into boxes or various other containers. The main component is a cylinder set with pins (according to the notes of the tune to be played); on rotating, the pins contact metal tongues arranged like the teeth of a comb, causing them to vibrate and produce the notes. The components are mounted on a plate and the cylinder is rotated either by a spring-operated (clockwork) motor, which is wound with a key, or directly by a handle. In some types, the cylinder may be replaced by a sheet-metal disc made on the hill and dale principle.

Articles which incorporate a musical mechanism but which are essentially utilitarian or ornamental in function (for example, clocks, miniature wooden furniture, glass vases containing artificial flowers, ceramic figurines) are not regarded as musical boxes within the meaning of this heading. These articles are classified in the same headings as the corresponding articles not incorporating a musical mechanism."

Although it is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS, we do not find the ENs to be dispositive regarding the classification of ornamental music box merchandise. EN 92.08 provides where a music box possesses essentially an ornamental or utilitarian function, it is excluded from classification as a music box in heading 9208, HTSUS. However, as set forth in HQ 958543 dated June 17, 1996, (published in the CUSTOMS BULLETIN on July 3, 1996, Vol. 30, No. 27), Customs follows a more liberal interpretation of the tariff term "music box" as found in *Pukel v. U.S.*, 60 Cust. Ct. 672, C.D. 3497 (1968) and *Amico v. U.S.*, 66 CCPA 5 (1978).

The subject goods are similar to the dancing figurine music box in *Amico*. Both items serve a purpose for the user. In the case of the subject goods, they provide soothing music in the form of an attractive pillow to an infant. The dancing figurine music box, which played waltz music in *Amico*, was marketed to teenage girls. It simulated appropriate dance movements related to waltz music. In both cases, the goods are "subordinate and incidental to the function of the music box". If both were alone, the musical mechanism would be unattractive and of "little consumer appeal". See *Amico* at 9.

In *Pukel*, the court interpreted the term "music box" in item 725.50, Tariff Schedules of the United States (TSUS) (the precursor tariff provision to subheading 9208.10.00), as a

small mechanical movement playing tunes automatically, which is incorporated into a box, case or cabinet. While the instant pillow contains a music box, the musical mechanism is enclosed and surrounded by polyester fiberfill and fabric. If the term "container" is viewed liberally, the music box definition is satisfied.

Although *Pukel* is a TSUS case, it has HTSUS implications. The Omnibus Trade Act of 1988 provides that earlier tariff decisions must not be disregarded in applying the HTSUS. Rather, on a "case by case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS." H. Rep. No. 100-576, 100th Cong., 2d Sess. 548,550 (1988).

In this instance the ENs are not dispositive. Rather we find the HTSUS and TSUS rulings as well as the court cases to be persuasive. The main purpose of a music box is to entertain by playing music. An ornamental article which otherwise meets the music box requirements remains classifiable under heading 9208, HTSUS.

Because the Daisy Kingdom musical pillow meets the definition of heading 9208, HTSUS, we find it to be classifiable as a music box within subheading 9208.10.00, HTSUS.

Holding:

Under the authority of GRI 1, the Daisy Kingdom musical pillow is classifiable as a music box within subheading 9208.10.00, HTSUS.

HQ 082738, dated February 3, 1990, is modified as set forth in this ruling.

JOHN DURANT,

Director,

Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC.

CLA-2 RR:CR:GC 964150 TF

Category: Classification

Tariff No. 9208.10.00

MR. JEFF MUSSER

EXPEDITORS INTERNATIONAL

880 Hinckley

P.O. Box 4389

Burlingame, CA 94011-4389

Re: Modification of HQ 087316; Heart Shaped Music Box.

DEAR MR. MUSSER:

This is in regard to HQ 087316 issued to you on July 9, 1990, by this office in reply to your letter dated April 27, 1990, on behalf of Paper White, Ltd., in which you requested a tariff classification ruling of several items, including a heart shaped music box. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling modifies HQ 087316 by providing the correct classification for the heart shaped music box.

Facts:

The subject good, identified as item # 2412, is a heart shaped music box which is designed to be hung on a baby's crib. The pillow is 55% linen, 45% cotton and stuffed with 100% polyester. The pillow contains a plastic, spring-operated musical mechanism which plays a tune.

In HQ 087316, Customs ruled the subject good to be classifiable as "other made up articles" within subheading 6307.90.95, Harmonized Tariff Schedule of the United States.

Issue:

Whether the subject good is classifiable as other made up articles within subheading 6307.90.95, HTSUS, or as a music box within subheading 9208.10.00, HTSUS.

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRI). GRI 1, HTSUS, provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, may be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the HTSUS. The ENs, although not dispositive, are used to determine the proper interpretation of the HTSUS by providing a commentary on the scope of each heading of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

| | |
|------------|--|
| 6307 | Other made up articles, including dress patterns: |
| 6307.90.95 | Other * * * other |
| | * * * * * |
| 9208 | Music boxes, fairground organs, mechanical street organs, mechanical singing birds, musical saws and other musical instruments not falling within any other heading of this chapter; decoy calls of all kinds; whistles, call horns and other mouth-blown sound signaling instruments: |
| 9208.10.00 | Music boxes |
| | * * * * * |

The *Merriam-Webster's Collegiate Dictionary* defines the term "music box" as a container enclosing an apparatus that reproduces music mechanically when activated by clockwork. *Id.* at 767 (10th Ed.) Although the music pillow is a miniature pillow which contains a mechanized music box which plays a tune, the HTSUS contains a specific provision for "music boxes" in heading 9208, HTSUS.

The ENs for 9208, HTSUS, categorize music boxes as musical instruments which are precluded from classification in any other heading of this chapter. It states, in pertinent part, that music boxes:

"[c]onsist of small mechanical movements playing tunes automatically, incorporated into boxes or various other containers. The main component is a cylinder set with pins (according to the notes of the tune to be played); on rotating, the pins contact metal tongues arranged like the teeth of a comb, causing them to vibrate and produce the notes. The components are mounted on a plate and the cylinder is rotated either by a spring-operated (clockwork) motor, which is wound with a key, or directly by a handle. In some types, the cylinder may be replaced by a sheet-metal disc made on the hill and dale principle.

Articles which incorporate a musical mechanism but which are essentially utilitarian or ornamental in function (for example, clocks, miniature wooden furniture, glass vases containing artificial flowers, ceramic figurines) are not regarded as musical boxes within the meaning of this heading. These articles are classified in the same headings as the corresponding articles not incorporating a musical mechanism."

Although it is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS, we do not find the ENs to be dispositive regarding the classification of ornamental music box merchandise. EN 92.08 provides where a music box possesses essentially an ornamental or utilitarian function, it is excluded from classification as a music box in heading 9208, HTSUS. However, as set forth in HQ 958543 dated June 17, 1996, (published in the CUSTOMS BULLETIN on July 3, 1996, Vol. 30, No. 27), Customs follows a more liberal interpretation of the tariff term 'music box' as found in *Pukel v. U.S.*, 60 Cust. Ct. 672, C.D. 3497 (1968) and *Amico v. U.S.*, 66 CCPA 5 (1978).

The subject goods are similar to the dancing figurine music box in *Amico*. Both items serve a purpose for the user. In the case of the subject goods, they provide soothing music in the form of an attractive pillow to an infant. The dancing figurine music box, which played waltz music in *Amico*, was marketed to teenage girls. It simulated appropriate dance movements related to the waltz music. In both cases, the goods are "subordinate and incidental to the function of the music box". If both were alone, the musical mechanism would be unattractive and of "little consumer appeal". See *Amico* at 9.

In *Pukel*, the court interpreted the term 'music box' in item 725.50, Tariff Schedules of the United States (TSUS) (the precursor tariff provision to subheading 9208.10.00), as a

small mechanical movement playing tunes automatically, which is incorporated into a box, case or cabinet. While the instant pillow contains a music box, the musical mechanism is enclosed and surrounded by polyester fiberfill and fabric. If the term "container" is viewed liberally, the music box definition is satisfied.

Although *Pukel* is a TSUS case, it has HTSUS implications. The Omnibus Trade Act of 1988 provides that earlier tariff decisions must not be disregarded in applying the HTSUS. Rather, on a "case by case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS." H. Rep. No. 100-576, 100th Cong., 2d Sess. 548,550 (1988).

In this instance the ENs are not dispositive. Rather we find the HTSUS and TSUS rulings as well as the court cases to be persuasive. The main purpose of a music box is to entertain by playing music. An ornamental article which otherwise meets the music box requirements remains classifiable under heading 9208, HTSUS.

Because the heart shaped music box meets the definition of heading 9208, HTSUS, we find it to be classifiable within subheading 9208.10.00, HTSUS.

Holding:

Under the authority of GRI 1, the heart shaped music box is provided in heading 9208, HTSUS, and is classifiable in subheading 9208.10.00, HTSUS

HQ 087316, dated July 9, 1990 is modified as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CLASSIFICATION OF WOMEN'S BODY SUPPORTING GARMENTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of classification ruling letter and treatment relating to the classification of certain women's body supporting garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of certain women's body supporting garments and revoking any treatment previously accorded by Customs to substantially identical merchandise. Notice of the proposed revocation was published in the CUSTOMS BULLETIN of June 28, 2000, Vol. 34, No. 26. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after October 16, 2000.

FOR FURTHER INFORMATION CONTACT: John Elkins, Textile Branch, (202) 927-2394.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In New York (NY) F80151, dated December 10, 1999, the classification of certain women's body supporting garments was determined to be in heading 6108, HTSUS. Since the issuance of this ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY F80151, and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 963631 (see "Attachment " to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the

rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: August 1, 2000.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, August 1, 2000.
CLA-2 RR-CR:TE 963631 jb
Category: Classification
Tariff No 6212.90.0030

GAIL T. CUMINS
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.
Seventy-five Broad Street
New York, NY 10004

Re: Classification of women's body supporting garments.

DEAR MS. CUMINS:

This is in response to your letter, dated January 4, 2000, on behalf of your client, Warnaco Inc., requesting reconsideration of New York Ruling Letter (NY) F80151, dated December 10, 1999, for certain women's body supporting garments. A sample was submitted to this office for review, in addition to substantive documentation demonstrating how this garment is marketed and sold.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY F80151 was published on June 28, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 26. No comments were received.

Facts:

The submitted sample, referenced style number 4520, is stated by you to be a "multi-functional" one piece body supporting garment. It is composed of 88 percent nylon and 12 percent spandex knit fabric. The one piece garment features a brassiere with underwires and adjustable elasticized straps, and a panty-girdle portion (which features a cotton liner) that extends from below the bust down over the hipline, culminating in a hook and eye closure between the legs. There are elasticized bands around the leg openings and the back of the brassiere. The subject garment, size 40 C, is sized based upon the brassiere.

In NY F80151 the subject garment was classified in heading 6108, HTSUS, which provides for, among other things, certain women's underwear. You disagree with this classification and believe that the classification determination in that ruling disregards the established limitations as to the scope of "underwear" within heading 6108, HTSUS, and fails to recognize that this multi-functional support garment is appropriately classified in heading 6212, HTSUS, in the appropriate provision for "other" support garments.

Issue:

What is the proper classification of the merchandise at issue?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is in accordance with the General Rules of Interpretation

(GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

Heading 6108, HTSUS, provides for, among other things, women's or girls' slips, petticoats, briefs and panties. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) to that heading state that "this heading covers two separate categories of knitted or crocheted clothing for women or girls, namely slips, petticoats, briefs, panties and similar articles (underclothing) and nightdresses, pyjamas, negliges, bathrobes (including beachrobes), dressing gowns and similar articles."

Heading 6212, HTSUSA, provides for, "brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted". Within this heading are four subheadings which provide for the following types of garments: brassieres at subheading 6212.10, HTSUS; girdles and panty girdles at subheading 6212.20, HTSUS; corsets at subheading 6212.30, HTSUS; and other body supporting garments at subheading 6212.90, HTSUS. The EN to heading 6212, HTSUS, state, in pertinent part:

This heading covers articles of a kind designed for wear as body-supporting garments or as supports for certain other articles of apparel, and parts thereof. These articles may be made of any textile material including knitted or crocheted fabrics (whether or not elastic).

The heading includes, *inter alia*:

- (1) Brassieres of all kinds.
- (2) Girdles and panty-girdles.
- (3) Corselettes (combinations of girdles or panty-girdles and brassieres).
- (4) Corsets and corset-belts. These are usually reinforced with flexible metallic, whalebone or plastic stays, and are generally fastened by lacing or by hooks.

All of the above articles may be furnished with trimmings of various kinds (ribbons, lace, etc.), and may incorporate fittings and accessories or non-textile materials (e.g., metal, rubber, plastics or leather).

Although the subject garment is worn as a combination brassiere and girdle, i.e., as an underwear garment, it is specifically designed to provide support for the wearer's body above the waist in addition to below the waist. Accordingly, it is more specifically provided for as a body supporting garment of heading 6212, HTSUS. We find support for the classification of this garment in heading 6212, HTSUS, in the EN to that heading which state that "corselettes" are among the articles provided for under that heading. A "corselette" is defined as:

Under-garment combining girdle or lightly-boned corset and brassiere. Also called *foundation* or *one-piece corset*. *The Fashion Dictionary*, by Mary Brooks Picken, (1973), at 89.

Foundation with firm support achieved by boning, power-net side panels, and front panel of non-stretch nylon taffeta. Sometimes has an inner belt which hooks separately to help flatten abdomen. Bra top is often of nylon lace with marquisette lining with adjustable shoulder straps. Foundation is fastened by hooks underneath zipper and has 6 garters. *Essential Terms of Fashion*, by Charlotte Mankey Calasibetta, (1986), at 64.

***, a one-piece garment combining brassiere and girdle, was developed in the 1930s and is still worn. *20,000 Years of Fashion*, by Francois Boucher, (1983), at 652.

Accordingly, so long as the subject garment can provide the support required of a "body supporting garment" as set forth under heading 6212, HTSUS, classification in this heading is proper. Close review of the subject merchandise reveals that although the fabric is lightweight (composed of 88 percent nylon and 12 percent spandex, the fabric provides substantial support to the wearer. Additionally, the bra portion of this garment features the traditional characteristics of a brassiere such as cups that provide support by holding the bust firmly in place, and in the case of this garment, underwire for extra support; elasticized adjustable shoulder straps which provide a secure fit and an elasticized back.

Lastly, we have reviewed all of the documentation submitted to us demonstrating that this garment is in fact marketed and sold as a "body slimming" garment and conclude that this garment fits squarely within what is intended as a body support garment of heading

6212, HTSUS. As such, the proper classification for this garment is in the applicable provision under heading 6212, HTSUS.

Holding:

NY F80151 is hereby revoked.

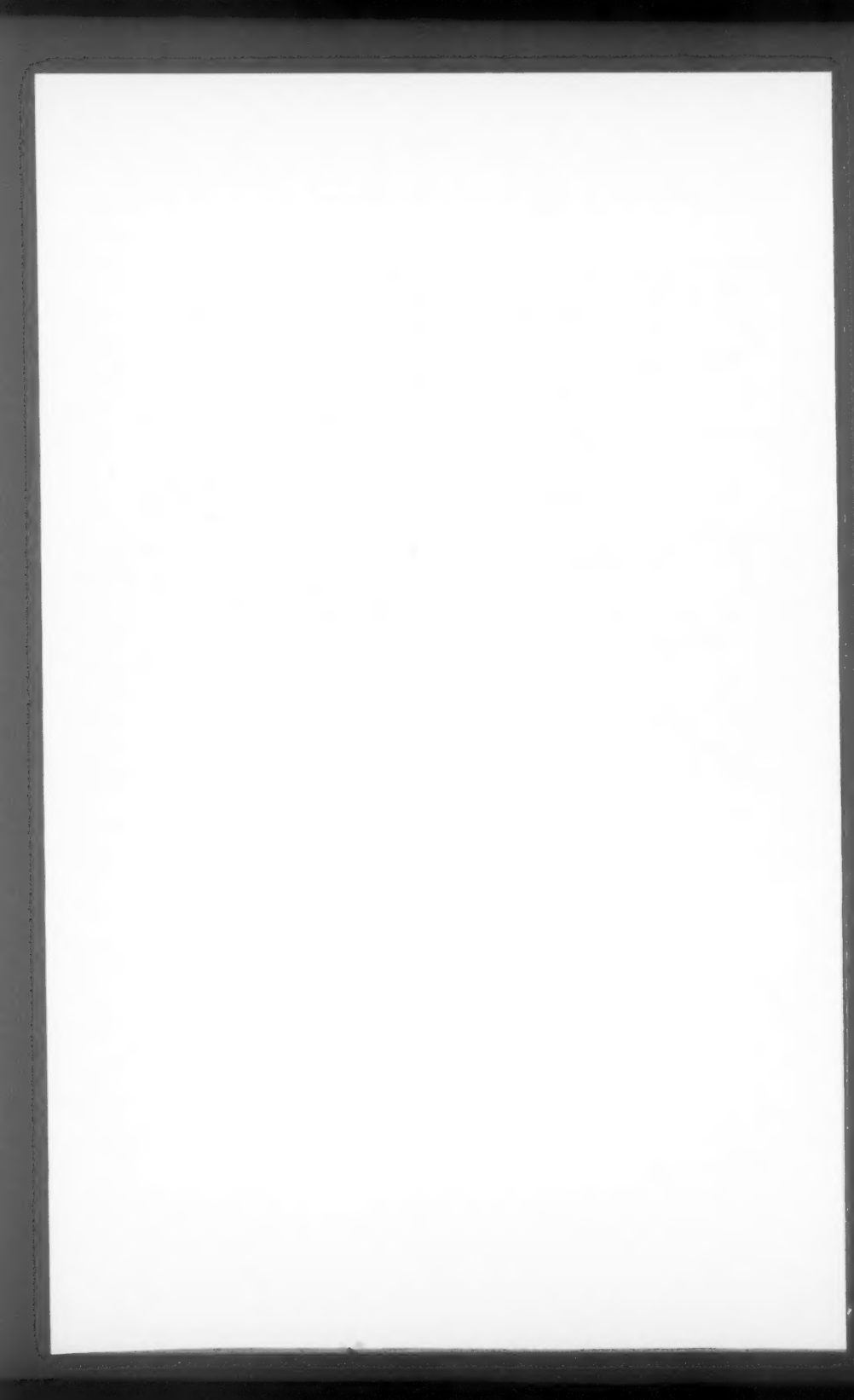
The subject merchandise, referenced style number F80151, is properly classified in subheading 6212.90.0030, HTSUSA, which provides for, brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: other: of man-made fibers or man-made fibers and rubber or plastics. The applicable general column one rate of duty is 6.8 percent *ad valorem* and the quota category is 659.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Status on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local Customs office prior to importing the merchandise to determine the current applicability of any import restraints or requirements.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)



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Vol. 34, No. 33, August 16, 2000

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